

# Chapter V

## INDIVIDUAL EDUCATION PROGRAM

### 707 KAR 1:320

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## **SECTION 1. INDIVIDUAL EDUCATION PROGRAMS**

### **KLEA Responsibility for Services**

An Admissions and Release Committee (ARC) is responsible for the development, implementation and monitoring, review, and revision of the IEP for each child classified as having a disability and needing specially designed instruction and related services who is:

- a. or soon will be, age 3 to 21 years of age;
- b. within the jurisdiction of the LEA; and/or
- c. placed in or referred to a private school or facility by the LEA.

When a child is placed by the LEA at the Kentucky School for the Deaf and the Kentucky School for the Blind, those schools, in conjunction with the LEA, shall ensure that an IEP is developed and implemented for the child.

### Initial Placement at KSB or KSD

When there is any indication that services from or placement at KSB or KSD may be appropriate for a child, the KLEA Representative will contact the DoSE. The DoSE will contact appropriate staff at KSB or KSD to invite a representative(s) of that school to the ARC meeting.

### Records

At the ARC meeting (for initial placement at KSB or KSD), the KLEA will be responsible for all paperwork, including IEP, notice of proposed and refused action, etc. If placement occurs, the KLEA Representative will ensure that copies of special education records and cumulative record information, including statewide assessment and writing portfolio pieces, are made available to KSB or KSD personnel.

After initial placement at KSB or KSD, the school of placement is responsible for maintaining the records of the child and copies are made available to the KLEA DoSE. Records for a child placed outside of the KLEA are maintained and located in the office of the DoSE.

### Continuing Placement at KSB or KSD

When a student is enrolled in KSB or KSD, a representative of the KLEA must be invited to all ARC meetings. It is the responsibility of the KLEA to determine who should attend this meeting as KLEA Representative. (See Section 3 of this Chapter regarding required ARC membership.)

If the parent needs assistance to attend the ARC meeting (e.g. transportation or access to video conferencing or telephonic conferencing) the KLEA Representative should assist with those arrangements.

If an ARC is needed for any reason, KSB or KSD staff will contact the DoSE and send out a notice of the meeting as soon as possible.

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When parents are not in attendance at any meeting, KSB or KSD staff are responsible for informing the parents of discussion during the meeting, and notice of any proposed or refused action, etc. Appropriate documents will be sent to the parent and the KLEA Representative.

### Implementation Expectations

The IEP shall be in effect for each child with a disability:

- a. at the beginning of each school year, and
- b. before specially designed instruction and related services are provided.

The IEP is implemented as soon as possible following an ARC meeting when the IEP is developed. There must be no undue delay in implementing the IEP, including any case in which the payment source for providing or paying for the special education and related services to the child is being determined.

Acceptable reasons for a planned delay in implementation might be as follows:

- a. when the meeting is held during summer recess;
- b. to develop an IEP for a child who is not yet three years of age;
- c. when there are circumstances that require a short delay (e.g. working out transportation arrangements);
- d. when a decision is made by the ARC to begin implementation with the next grading period, or other natural break in school instruction; or
- e. when awaiting consent from the parent for the initial provision of services.

Each ARC shall include on each IEP all specially designed instruction and related services needed by a child with a disability even when the services are not currently or directly available.

The KLEA will provide these services directly through staff assignment or creation of resources, or indirectly by contracting with another public or private agency, or through other arrangements.

The KLEA Representative assigns a case manager (see Chapter I, Definitions) for every child with an IEP, who will track the delivery of all services and report to the KLEA representative in a timely manner if any service is not being delivered in accordance with the IEP.

If an identified educational need addressed on an IEP requires a service not currently or directly available from the KLEA, or when a service is not being provided, then the KLEA Representative notifies the DoSE within five (5) school days to make arrangements for delivery of services. These arrangements may include expanding current services, starting new services, or contracting for services.

If after 10 school days the KLEA Representative and DoSE are unable to arrange for delivery of an identified service, the DoSE contacts KDE for assistance, including obtaining training and support in the identified area of need. The DoSE maintains records (correspondence, newspaper advertisements, etc.) of efforts made to obtain needed services.

### **Accessibility of IEP to All Implementers**

The ARC shall ensure that child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and other service providers (e.g. paraprofessional) who are responsible for implementation of the IEP. Specific accommodations, modifications and supports are provided for the child in accordance with the IEP.

The KLEA representative is responsible for ensuring that all implementers have access to the IEP prior to its implementation, and are informed of their specific responsibilities.

### **SECTION 2. ARC MEETINGS**

The LEA establishes an admissions and release committee (ARC) with appropriate membership to address the process of identification, evaluation, and placement and the provision of free appropriate public education for an eligible child with a disability.

The LEA assures that within sixty (60) school days following the receipt of the parental consent for an initial evaluation of a child, the child will be evaluated, and if the child is eligible, specially designed instruction and related services will be provided in accordance with the IEP. Within this sixty (60) day timeline, the LEA shall assure that the ARC meeting to develop on IEP for the child is conducted within thirty (30) days of the determination that the child is eligible.

The ARC can develop the IEP for the child in the same meeting where eligibility is determined. The ARC members develop an IEP for each child with a disability who is determined to need specially designed instruction and related services before the child receives services.

The ARC reviews each child's IEP periodically, but no less than annually, to determine whether annual goals are being met, and revises the IEP as appropriate to address:

- \* any lack of expected progress towards the annual goals;
- \* any lack of expected progress in the general curriculum, if appropriate;
- \* the results of any reevaluation; information about the child provided by or to the parents;
- \* the child's anticipated needs; and
- \* other matters.

Each ARC shall gather and review information to determine the status of a child with a disability with regard to the IEP and shall ensure that progress data are maintained for the child.

The ARC members do **not** develop an IEP when a child:

- a. has been evaluated and the ARC members have determined that the child does not have a disability under IDEA;
- b. has a disability, but that disability does not adversely affect the educational performance of the child; or
- c. has an IEP, developed within the last 12 months, that meets the needs of the child.

## **IEP Form**

Each ARC uses an IEP form provided by the KLEA for recording the content of the IEP document. If the form does not have enough space for any component of the IEP, the ARC uses additional pages to fully explain each component. This IEP form:

- a. contains at least the minimum components specified by state and federal laws and regulations, as described in the remainder of these procedures; and
- b. facilitates the flow of information for each of the planning phases.

## **Actions Prior to Meeting to Develop an IEP**

KLEA personnel will follow procedures in Chapter VII, Procedural Safeguards and Chapter IX, Confidentiality of Information for notice and access to student records prior to an ARC meeting. If the parent's native language is other than English or if a different mode of communication is used, the KLEA Representative makes arrangements for an interpreter and for translating, transcribing, or recording the IEP according to procedures in Chapter VII, Procedural Safeguards.

Prior to an ARC meeting, the KLEA Representative notifies all members to bring data or information about the child to use in developing or revising the IEP. This information may include oral or written statements of recommendations for priority needs, evaluation results, student progress, present levels of performance, annual goals, benchmarks or short-term instructional objectives, and the type of special education and related services needed. No member of an ARC presents a final IEP. When committee members come prepared with information related to their areas of expertise, then:

- a. the KLEA representative makes the parents aware at the beginning of the meeting that any prepared information is for suggestion only and open for review and discussion;
- b. each piece of information is discussed; and
- c. group decisions are made related to inclusion in the IEP document. The IEP is developed and completed in written form during an ARC meeting to ensure input from all members.

## **Organizing the Meeting to Develop or Revise an IEP**

### Audio or Video Recordings of ARC Meetings

“No federal or state statute or regulation either authorizes or prohibits the recording (audio or video) of an ARC meeting by either a parent or school staff. Therefore, the KLEA has the option to require, prohibit, limit or otherwise regulate the use of recording devices at ARC meetings.” (Federal Appendix A, Q & A #21) The KLEA Representative, in consultation with the DoSE, shall determine, on a case-by-case basis, the KLEA decision when a request is presented for audio or video recording of ARC meetings.

The KLEA chooses to prohibit the use of any audio or video recording at ARC meetings, unless such a recording is necessary to ensure that the parent understands the IEP or the ARC process or to implement other parental rights guaranteed under the law. Audio or video recordings have the potential to intimidate individual participants and may otherwise inhibit the discussions and decision-making process of the ARC, and thus would not be in the best interests of the child.

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Any ARC member who wishes to seek exception to this policy has the responsibility to show cause as to the need of the parent. The need of the parent is defined as a unique circumstance or situation that would result in the parent's inability to participate in and understand the ARC process or give informed consent. For example, a parent who is hearing impaired and wears hearing aid(s) may not be able to utilize the services of an interpreter, but may require the recording in order to review the meeting with increased sound capabilities prior to giving consent for initial evaluation. The KLEA Representative, in consultation with the DoSE, shall determine, on a case by case basis, the KLEA decision when a request is presented for audio or video recording of ARC meetings.

The DoSE and each KLEA Representative shall ensure that this policy is uniformly applied.

Any recording of an ARC meeting that is maintained by the KLEA is an "education record," as defined by the Family Educational Rights and Privacy Act ("FERPA"; 20 U.S.C. 1232g). Such recording is therefore subject to the confidentiality requirements of the regulations under both FERPA (34 CFR Part 99) and 707 KAR 1:360 (Chapter IX, Confidentiality of Information. The KLEA Representative shall ensure that any such recording is maintained as a part of the child's special education record.

#### Documentation of ARC Meeting Discussions/ Proposed or Refused Actions

Prior to the development, review, or revision of an IEP, the KLEA Representative selects member(s) to document the ARC meeting discussion including proposed or refused actions. This Conference Summary serves as notice of proposed or refused action.

At the beginning of each ARC meeting to develop, review, or revise an IEP, the KLEA Representative reviews the parent's rights (Chapter VII, Procedural Safeguards). In addition, the following process may be reviewed:

- a. Each ARC member will have an opportunity to share information;
- b. ARC members will present information as suggestions for study and discussion.
- c. The ARC members will discuss and consider any information brought by any member, including parents, before any group decision is made. If the ARC determines that there is insufficient data to develop or revise the IEP, then the KLEA Representative will schedule another meeting for IEP development, keeping in mind the timelines for IEP completion. The additional data needed and the ARC members assigned to collect the data will be documented in the Conference Summary.
- d. Parents and school personnel will have an active and equal role in the discussion about the needs of the child and in deciding what services will be provided.
- e. For each piece of information presented, the ARC members will decide as a group whether or not to include the information in the IEP.
- f. The ARC members will discuss all the required components of the IEP during the meeting.
- g. After a component is discussed by ARC members, the recorder will write the issues discussed on the Conference Summary and IEP.
- h. The recorder will keep a record of the ARC meeting on the Conference Summary form.
- i. The KLEA Representative will give a copy of the IEP and the Conference Summary to the parent. (See procedures for notice of proposed/refused action and parent participation in Chapter VII, Procedural Safeguards.)

### **Decision Making Process**

The ARC members try to reach consensus when developing, reviewing or revising an IEP. ARC members reach consensus by total agreement on an issue or by negotiating a compromise to which all members can agree. Before any decision is recorded on the IEP, the KLEA Representative summarizes the decision, and determines the level of agreement within the ARC.

If the parent and KLEA personnel cannot reach consensus or negotiate a compromise on a component of an IEP:

- a. The ARC may develop an interim course of action in terms of services to which both parties can agree;
- b. The KLEA Representative advises the parent of the right to resolve differences through the due process procedures;
- c. The KLEA Representative proposes the use of mediation for resolving the difference; and
- d. The recorder summarizes the points of disagreement and the interim course of action in the meeting summary.

If any ARC member, other than the parent, disagrees with any part of the proposed IEP, the dissenting member(s) may attach (required under Specific Learning Disability eligibility consideration) a written statement to the meeting summary giving the reasons for disagreement. The KLEA Representative states the district's position and the recorder explains that position in the meeting summary.

If the ARC cannot reach consensus on an interim measure, the last agreed upon IEP remains in effect until the disagreement is resolved. The recorder notes on the Conference Summary form that continuation of the existing IEP has a time limitation to be determined by the ARC. The ARC reconvenes at an agreed upon time and date unless mediation or a due process hearing is requested or a complaint is filed. (Chapter VII, Procedural Safeguards.)

If mediation or a due process hearing is initiated by either the parent or the KLEA because of disagreement over the IEP, or when a complaint is filed, the KLEA does not change the IEP or placement of the child unless the parent and the KLEA agree otherwise. (See Chapter VII, Procedural Safeguards)

If the ARC does not complete the IEP at the meeting when initial eligibility is determined, the ARC members should schedule a convenient date and time to continue the meeting to complete the IEP. A reconvened meeting must be held within 30 calendar days of the eligibility meeting and within 60 school days of the receipt of the parent consent to evaluate, according to timelines in Due Process Procedures.

If the ARC members do not complete review and revision of an IEP, this is documented on the Conference Summary and the ARC schedules another meeting at an agreed upon date and time which is within 30 days and prior to the annual review date.



## **IEP Completed**

When all components of the IEP are complete, the KLEA Representative gives a copy of the IEP and the Conference Summary to the parent of the child if present at the meeting, according to Chapter VII, Procedural Safeguards. If the parent's native language is other than English or if a different mode of communication is used, the KLEA Representative makes arrangements for translating, transcribing, or recording the IEP according to procedures in Chapter III, Child Find and Chapter VII, Procedural Safeguards. The assigned case manager files the originals of the IEP and meeting summary in the special education folder of the child.

If the parent does not attend the ARC meeting to develop the initial IEP, the KLEA Representative sends a copy of the IEP Conference Summary, notices and Consent for Services form to the parents within **two (2) school days**. IEP implementation cannot begin until the signed Consent for Services is received.

If the parent does not attend a meeting to review or revise the IEP, the KLEA Representative sends a copy of the IEP Conference Summary and notices to the parents within two (two) school days. If the parent does not respond within **five (5) school days**, services begin as indicated in the revised IEP.

## **Services for Transfer Students**

### KLEA Responsibility for Providing FAPE

If a child with a disability moves into the KLEA, the KLEA has an ongoing responsibility to ensure that FAPE is made available to that child. In accordance with Chapter II, Free and Appropriate Public Education, the KLEA has the responsibility to make FAPE available to all eligible children with disabilities aged three (3) to twenty-one (21) residing within its boundaries.

### Prior to Provision of Service

The KLEA must ensure that the child has an IEP in effect before providing special education and related services. This responsibility may be met by either adopting the current IEP developed for the child by the previous school setting or by developing a new IEP for the child. Any IEP so developed or agreed upon, is valid only until the ARC makes a determination regarding continued eligibility of the child.

### Adopting the Current IEP from the Previous School

It is not necessary to conduct an ARC meeting immediately before beginning to implement the IEP if:

- a. a copy of the child's current IEP is available;
  - b. the parents indicate that they are satisfied with the current IEP; and
  - c. the school determines that the current IEP is appropriate and can be implemented as written.
- (Federal Appendix A, Q & A #7)

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In order to satisfy these requirements, school members of the ARC will review the IEP to determine appropriateness and that the IEP can be implemented as written; the KLEA Representative will contact the parents and verify that they are satisfied with the current IEP.

However, if either the school members of the ARC or the parent believes that the child's current IEP is not appropriate or cannot be implemented as written, the ARC must develop a new IEP through appropriate procedures within a short time after the child enrolls in the school (normally, within one week). If the parents and the KLEA are unable to agree on a temporary IEP and placement, the KLEA must implement the old IEP to the extent possible until a new IEP is developed and implemented. (Federal Appendix A, Q & A #17)

If there is disagreement about appropriateness of the IEP, by the 5<sup>th</sup> day of enrollment, a notice of ARC meeting shall be sent to the parent, in accordance with timelines for proper notice in Chapter VII, Procedural Safeguards. The KLEA may provide interim services agreed to by both the parents and the KLEA, pending the development of the new IEP.

The special education teacher, counselor or principal calls the previous school, within two school days of the child's enrollment, and a request is made for the following special education records to immediately be sent to the school:

- \* copy of current IEP, including all progress monitoring data & progress reports to parents;
- \* copy of Conference Summaries that pertain to this IEP;
- \* copy of Parent Consent to Conduct Evaluations and provide Service;
- \* copy of initial evaluation and most recent reevaluation; and
- \* copy of parent consent to bill Medicaid, if applicable.

Even when the KLEA has a copy of the previous IEP, there is still a need to determine eligibility for services in accordance with Chapter III, Child Find, Evaluation and Reevaluation and Chapter IV, Determination of Eligibility.

If the requested information is received, an ARC meeting will be scheduled to determine eligibility for continued services and develop an IEP on the form provided by the KLEA. If necessary to conduct a reevaluation, the IEP developed at this meeting will be valid only until an ARC meeting can be scheduled, within the timelines for reevaluation, to determine eligibility for services.

If the requested information is not received in **20 school days** from the date of enrollment, an ARC meeting will be scheduled in order to discuss planning for a reevaluation to determine eligibility for services, and develop a temporary IEP on the IEP form provided by the KLEA or accept the current IEP. If a temporary IEP is developed, it will be developed using the IEP from the previous school, information from the parent and teachers who have worked with the child in the present school setting, and any other information deemed appropriate by the ARC. Either IEP shall be valid only until an ARC meeting can be scheduled, within the timelines for reevaluation, to determine eligibility for services.

### Transfer Student Has No Available IEP

The ARC members develop an IEP for a child with a disability who enrolls in KLEA when the child:

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- \* was receiving special education services at the time of the transfer (in the school days immediately preceding enrollment),
- \* has no IEP available at time of enrollment, and
- \* has service requested by the parent.

Within **two (2) school days**, the special education teacher, counselor or principal calls the previous school and documents the following information on the verification form provided by the KLEA for this purpose:

- a. child was receiving specially designed instruction and related services up to the time of transfer;
- b. verification of specific goals, objectives/benchmarks, and services;
- c. date of last evaluation and
- d. description of placement in the least restrictive environment.

At the time of this call, a request is made for the following special education records to immediately be sent to the school:

- \* copy of current IEP, including all progress monitoring data & progress reports to parents;
- \* copy of Conference Summaries that pertain to this current IEP;
- \* copy of Parent Consent to Conduct Evaluations/Reevaluations, and provide Service;
- \* copy of initial evaluation and most recent reevaluation; and
- \* copy of Parent Consent to bill Medicaid, if applicable.

If the requested information is received, an ARC meeting will be scheduled to determine eligibility for continued services and develop an IEP on the form provided by the KLEA. If necessary to conduct a reevaluation, the IEP developed at this meeting will be valid only until an ARC meeting can be scheduled, within the timelines for reevaluation, to determine eligibility for services.

If the requested information is not received in **20 school days** from the date of enrollment, an ARC meeting will be scheduled in order to discuss planning for a reevaluation to determine eligibility for services, and develop a temporary IEP on the IEP form provided by the KLEA. This temporary IEP will be developed using information from the parent and teachers who have worked with the child in the present school setting, and any other information deemed appropriate by the ARC. This IEP shall be valid only until an ARC meeting can be scheduled, within the timelines for reevaluation, to determine eligibility for services.

### SECTION 3. ARC MEMBERSHIP

The LEA shall ensure that the ARC for each child with a disability includes:

- a. the parents of the child, who are afforded the opportunity to participate;
- b. a regular education teacher of the child (if the child is or may be participating in the regular education environment) to provide information about the general education curriculum for same aged peers;
- c. a special education teacher of the child or a special education teacher who has knowledge of the disability or suspected disability, or, if appropriate, at least one special education provider of the child;
- d. a representative of the LEA who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities, and is knowledgeable about the general curriculum and the availability of the resources of the LEA. (Federal Appendix A, p. 12477; "It is important, however, that the representative have the authority to commit agency resources and be able

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- to ensure that whatever services are set out in the IEP will actually be provided.”)
- e. an individual who can interpret the instructional implications of evaluation results, who may also be a member of the team described in (B) through (D);
  - f. individuals who have knowledge or special expertise regarding the child, at the discretion of the parent or the LEA;
  - g. related services personnel, as appropriate;
  - h. the child, if appropriate (must be invited if transition is to be discussed).
  - i. an public agency representative if that agency is likely to be responsible for providing or paying for transitions services.

At a minimum, the ARC meeting must have in attendance the KLEA representative, a regular education teacher of the child (if the child is or may be participating in the regular education environment), and a special education teacher or provider. If evaluation information is to be discussed, one member must also be able to interpret the instructional implications of evaluation results.

If the purpose of an ARC meeting is consideration of a preschool child or preschool transition services, the KLEA Representative invites representatives from agencies providing early childhood or intervention services to the child or family as members of the ARC. (see Chapter II, FAPE, Section 8 & Chapter III, Child Find.)

If the purpose of an ARC meeting is consideration of postsecondary transition, a public agency that is likely to be responsible for providing or paying for transition services shall also be invited. (see Section 6 for more information on transition planning requirements.) If that representative does not attend, the special education teacher of the child shall attempt to contact, by phone or in person, the agency representative, to obtain participation in the planning of transition services.

### Parents of the child

The parents of a student with a disability are key members of the ARC and are expected to be equal participants along with school personnel in developing, reviewing, and revising the IEP for their child.

The Parents are expected to :

- a. provide information about the child, including information about the child outside the school setting;
- b. provide input for development of the IEP;
- c. give written permission for evaluation and initial placement and reevaluation; and
- d. provide support for implementation of the IEP.

### KLEA Representative

The KLEA Representative must be someone who is knowledge about the general education curriculum, qualified to supervise the provision of specially designed instruction and able to commit personnel and fiscal resources for implementation of the IEP. As instructional leader of the school, the principal is the assigned administrator who meets this criteria and is ultimately responsible for the implementation of the ARC process in his/her school building. The principal will ensure that all KLEA procedures are followed and that services set out in the IEP are actually provided.

The principal, using professional judgment criteria, and in accordance with this procedure, may assign another school-based administrator (assistant principal or school counselor) to serve as the KLEA representative.

In the event that a child is not enrolled in a KLEA school, e.g. child is placed in a program not provided by the KLEA, or the child is served in the preschool home-based program, in the district's home-hospital program, or in an alternative school without an assigned Principal (e.g. Head Teacher leadership role), the DoSE may serve as the KLEA representative who is qualified to supervise the provision of specially designed instruction, knowledgeable about the general curriculum, and able to commit personnel and fiscal resources for implementation of the IEP.

The KLEA Representative:

- a. insures due process procedures and other procedural safeguards;
- b. makes the determination of student representative;
- c. determines composition of committee which is then documented by signatures on Conference Summary;
- d. facilitates group decision making, and if necessary makes a determination of the KLEA position when the ARC cannot agree;
- e. receives written referrals and assures that the ARC reviews and analyzes the referral and determines if sufficient information is available for initiating a full and individual evaluation;
- f. provides support for, and ensures implementation of ARC decisions & the IEP.
- g. communicates with parents, notifying them of all ARC meetings;
- h. \*coordinates work of the committee;
- i. \*obtains and tracks appropriate evaluations;
- j. \*sends notice of ARC meetings; contacts parent about child's invitation to the meeting;
- k. \*chairs ARC meetings;
- l. \*maintains records of conference proceedings;
- m. \*communicates with all IEP implementers, assuring that the IEP is accessible to them and they are informed regarding their specific responsibilities in implementation of the IEP.

\* The KLEA Representative may designate other school staff committee members to assist in the implementation of these committee functions or procedures.

### **Special Education Teacher**

The KLEA Representative selects a special education teacher for the ARC for each child according to the purpose of the meeting, taking into consideration:

1. the qualifications of the teacher and the known disability, or the suspected disability supported in the initial referral for possible specially designed instruction and related services;
2. whether the special education teacher currently works with the child receiving specially designed instruction and related services; and
3. whether the special education teacher may serve the child who is moving from one educational setting to another.

The Special Education Teacher:

- a. assists in maintaining records of meeting procedures;
- b. assists in conducting necessary evaluations of referred child;
- c. assists committee in determining eligibility of child for a program for exceptional children;
- d. provides input in the development of the IEP: levels of performance, goals, objectives, and special education and related services needed;
- e. implements IEP of children included in his/her caseload including written documentation of child's progress and accomplishment of goals, objectives/benchmarks;
- f. provides input on child's progress and revision of the IEP at the annual review conference.

### **Regular Education Teacher**

The KLEA Representative selects a regular education teacher to serve on the ARC committee for each child according to the purpose of the meeting, taking into consideration:

- a. whether the teacher currently teaches the child;
- b. whether the teacher initiated the referral;
- c. the benefit of the teacher's participation in terms of the success of the child in the regular education program; or
- d. whether the teacher is expected to teach the child who is moving from one educational setting to another.

The regular education teacher must be a member of the ARC if the child is, or may be, participating in the regular education environment. In circumstances where instruction is provided by more than one regular education teacher, only one of those teachers is required to attend the ARC meeting. The regular education teacher who serves as a member of the ARC should be the teacher who is, or may be, responsible for implementing a portion of the IEP. If the child has more than one regular education teacher responsible for implementing a portion of the IEP, the KLEA Representative may designate which teacher or teachers will serve, taking into account the best interest of the child. (Federal Appendix A; Q & A #26) Although all the child's teachers may not attend, they will all be informed about the IEP prior to the implementation of the IEP. Federal Appendix A, Q & A #25)

The KLEA Representative solicits written comments or input from teachers and related services providers who work with the child, but whose attendance is not required at ARC meetings. (Federal Appendix A, Q & A #26) In this situation where not all teachers attend the ARC meeting, it is strongly encouraged that information be sought from the teachers not in attendance and shared at the meeting.

If a child does not have a regular education teacher, the KLEA Representative selects a regular classroom teacher qualified to teach a child of his or her age. For a child of less than school age, the ARC selects an individual qualified to teach a child of his or her age.

The Referring Teacher/Regular Classroom Teacher:

- a. submits written referral to KLEA Representative;
- b. attempts and documents interventions and strategies in the regular classroom setting designed to alleviate student problems;
- c. assists in the determination of positive behavioral interventions and strategies for the child;
- d. presents information about the student's involvement and progress in the general curriculum

- e. assists in the development of goals, objectives/benchmarks and specially designed instruction for the child;
- f. assists in the determination of supplementary aids and services, program modifications or supports for school personnel that will be provided for the child;
- g. assists in implementing IEP when appropriate;
- h. provides input about the child's progress (maintaining monitoring data if appropriate) and revision of the IEP at the annual review meeting.

**Person who can interpret instructional implications of evaluation results**

The KLEA Representative arranges for a member of the multidisciplinary evaluation team, or other knowledgeable person who can interpret the instructional results of any evaluation, to attend the ARC meeting.

This person who can interpret evaluation results:

- a. provides information regarding needed areas of assessment;
- b. assists in explaining assessment procedures;
- c. interprets the instructional implications of evaluation results; and
- d. provides input into the development and implementation of the IEP.

**Related Services Personnel, as appropriate**

If a child has an identified need for related services, it would be appropriate for related service personnel to attend the meeting or be otherwise involved in developing the IEP. Depending on the child's individual needs, some related service professionals attending the ARC meeting or otherwise helping to develop the IEP might include physical or occupational therapists, adaptive physical education providers, counselors or psychologists, bus drivers or transportation directors, and speech-language pathologists, etc. (Reference the Related Services component of Section 5, "Contents of the IEP" for more information.)

A public agency must ensure that all individuals who are necessary to develop an IEP that will meet the child's unique needs, and ensure the provision of FAPE, participate in the child's meeting. (Federal Appendix A, Q & A #30)

The Related Services Personnel demonstrate participation by:

- 1. attending the ARC meeting, or
- 2. providing a written recommendation concerning the nature, frequency, and amount of service to be provided to the child.

**Child With a Disability**

Child Younger than Fourteen (14)

A child with a disability may attend "if appropriate." Generally, a child with a disability should attend the ARC meeting if the parent decides that it is appropriate for the child to do so. If possible, the KLEA Representative and parents should discuss the appropriateness of the child's participation

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### **Individual Education Program**

before a decision is made, in order to help the parents determine whether or not the child's attendance would be (1) helpful in developing the IEP or (2) directly beneficial to the child or both. The KLEA should inform the parents before each IEP meeting that they may invite their child to participate. (Federal Appendix A Q & A #6)

If transition services are initially discussed at an ARC meeting to which the student was not invited, the KLEA Representative is responsible for making sure that before a decision is made, a subsequent ARC meeting is conducted for that purpose, and the child is invited to attend the meeting. (See Transition, Section 6 and Parent Participation, Section 4.)

#### Child Age Fourteen (14) to Twenty-one (21)

A child must be invited to participate in the ARC meeting if a purpose of the meeting is the consideration of post-school transition services. For a child who is fourteen (14) years of age or older, the invitation to the parent shall indicate that the child is invited and that one of the purposes of the meeting is the planning of transition services. For a child who is sixteen (16) years of age or older, the invitation to the ARC meeting sent to the parent shall indicate that the child is invited and include the identity of any other agency that is invited to send a representative.

If a child elects not to attend the ARC meeting where post-school transition services are discussed, the child's teacher takes steps to ensure that the youth's preferences and interests are considered. This information may be gained from an interview with the student.

#### Notice to child Age Eighteen (18) to Twenty-one (21)

In the case of a student who is age 18 or older (has reached the age of majority) all notices are sent directly to the student. The school or the student may invite the parents as persons with knowledge about the student unless there is a court order granting guardianship of the child to someone else.

#### **Other Individuals Knowledgeable about the Child at Discretion of Parent or KLEA**

The LEA or the parent may invite other individuals knowledgeable about the child. These other individuals at the IEP meeting are expected to have knowledge or special expertise regarding the child. Therefore, teacher organization officials are not authorized to participate in ARC meetings to represent teachers. Also, even if attorneys do possess knowledge or special expertise about the child, their presence would have the potential for creating an adversarial atmosphere which would not be in the best interest of the child. Attorneys may be ordered to attend by an Impartial Hearing Officer, and only in that case may their attendance be included in a request for attorney fees payment. (Federal Appendix A Q & A #28)

Other individuals knowledgeable about the child:

- a. participate in conference upon request of the KLEA or the parent, sharing their knowledge or expertise; and
- b. provide input into the development of the IEP.



### **Agency Representatives Involved in Transition Planning**

If the purpose of the ARC is to discuss transition services for a child with a disability, a public agency that is likely to be responsible for providing or paying for transition services shall be invited. If the representative of the other public agency does not attend, the LEA shall take other steps to obtain participation of the other agency in the planning of any transition services.

If an agency is invited but does not send a representative to the ARC meeting, the KLEA Representative takes other steps to obtain participation of the other agency in the planning of any transition to post-school services. District personnel will contact the agency representative (by phone or personal contact) to begin and implement planning for the child's services, and report appropriate information to the ARC.

Agency representatives:

- a. provide information about services of the agency and any issues of eligibility for service;
- b. coordinate with school staff and suggest any needed areas of instruction; and
- c. begin the process for service delivery.

### **SECTION 4. PARENT PARTICIPATION**

#### **Notification of ARC Meeting**

An LEA shall ensure that one or both of the parents of a child with a disability are present at each ARC meeting or are afforded the opportunity to participate. Parents shall be notified of the meeting early enough that they will have an opportunity to attend, and the meeting shall be scheduled at a mutually agreed upon time and place.

This Parent's Rights document shall be in a format provided by the KLEA. A copy shall be mailed to the parent with the Notice of Admissions and Release Committee Meeting for the initial ARC meeting for referral or transfer students, so the parent may have an opportunity to gain information about the process and their rights before attending the meeting.

For all subsequent ARC meetings, the Notice of Admissions and Release Committee Meeting informs the parent that they may request another copy or explanation of the parent's rights prior to the meeting. **(Note: This requires a change in the Notice of Admissions and Release Committee Meeting form.)** (See Chapter VII, Procedural Safeguards).

The only exception to the advance notice of meeting requirement (7 calendar days) is in the situation involving a proposed change of placement for disciplinary reasons. In this instance, the parent must be notified of the decision no later than on the date that decision is made, and provided with a copy of the Parents' Procedural Safeguards document. This ARC meeting to determine the relationship of the child's disability to the behavior subject to the disciplinary action (change of placement) will be held immediately, if possible, but in no case later than ten (10) school days after the decision to take action is made. (See Chapter VII, Procedural Safeguards).

This Notice or invitation to the ARC meeting shall include:

- (a) the purpose of the meeting;
- (b) the time and location of the meeting;
- (c) who will be in attendance; and
- (d) the information that the parents may invite people with knowledge or special expertise of the child to the meeting.

The Notice of the meeting will include the role of persons invited, e.g. principal; regular education teacher, etc.

If the child is at least fourteen (14) years of age, the invitation shall indicate that a purpose of the meeting will be the development of a statement for the need for transition services of the child and indicate that the child is invited. This action applies to a child younger than 14 if determined to be appropriate by the ARC.

If the child is at least sixteen (16) years of age (or younger if deemed appropriate by the ARC), the invitation shall indicate that a purpose of the meeting is the consideration of the needed transition services for the child, and shall include the identity of any other agency that is invited to send a representative.

This notice to the parent indicates that the child is invited to the meeting. (See Section 6, Transition Services, for procedures when post-secondary transition planning is a purpose of the meeting.)

### **Methods to Ensure Parent Participation**

The LEA shall ensure parent participation in the ARC meeting if the parent is unable to attend by using other methods, which may include individual or conference telephone calls or video conferencing.

The LEA must take whatever action is necessary to ensure that the parents understand the proceedings at the ARC meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

If the parents are unable to meet prior to the expiration date of the annual IEP and request that the current IEP be extended for a short period of time until they can be involved in the meeting, the school may honor their request. The assigned case manager shall document why the IEP has not been reviewed and when the IEP will be reviewed and revised.

### **Conducting the ARC Meeting Without a Parent**

An ARC meeting may be conducted without the parent(s) in attendance if the LEA has been unable to convince the parents that they should attend. The LEA shall have a record of its attempts to arrange a mutually agreed on time and place, which may include:

- \*Detailed records of telephone calls made or attempted, and the results of those calls;
- \*Detailed records of visits made to the parents' home or place of employment and the results of the visits; and
- \*Copies of correspondence sent to the parents and any responses received.

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The detailed records shall be kept by the person attempting the contacts, and will include the date, time and name of the person making the attempt. These records, and the copies of any correspondence sent to the parent, and any response received, will be filed in the child's special education record.

The LEA shall give the parent a copy of the child's IEP at no cost to the parent.

If a parent does not attend the ARC meeting, the Conference Summary and other pertinent documents, including the IEP, will be sent by mail to the parent within **two (2) school days** after the meeting.

### Changing the IEP when Parents Do Not Attend ARC Meeting

If the parents fail to respond to attempts by the school to obtain their participation, and the ARC meeting must be conducted without the parents' participation, it may become necessary during the meeting for the ARC to consider making changes to the student's IEP without the parents' participation.

For any change to an IEP to occur, the school must hold an ARC meeting. After the ARC has met and determined any needed changes or actions, and before any changes/actions occur, the school must provide the parents with a prior written notice of proposed or refused action. This notice is mailed to the parent within **two (2) school days** after the ARC meeting, and there are at least **five (5) school days** from the date on the notice until the change occurs. Proposed action will not be implemented until this **ten (10) day** timeline has passed. This notice allows the parents an opportunity to consent to the proposed change if their consent must be sought, or object to the change even if their consent is not required. (See Chapter VII, Procedural Safeguards for more discussion regarding parent consent.)

## SECTION 5. CONTENTS OF THE INDIVIDUAL EDUCATION PROGRAM

The ARC members use comprehensive child performance information to specifically define the needs of a child and develop the IEP as a direct response to those needs. The ARC writes a single integrated IEP that includes specially designed instruction and related services.

In order to ensure parent participation in the development of the IEP, the IEP may not be completed before the ARC meeting. Members of the ARC, including parents, may come with evaluation findings and recommended IEP components, but it should be made clear to all members that these are only suggestions and that ARC determination is required before any recommendations become final. When school personnel or parents bring a draft of some or all of the IEP content to the ARC meeting, there is to be a full discussion with the ARC before the student's IEP is finalized. Parents do have the right to bring questions, concerns, and recommendations to an IEP meeting for discussion (Federal Appendix A, Q & A #32.)

### Identifying Information & Process

An ARC shall not be required to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

### Identifying Information Regarding the Child

The ARC members provide identification information from personal knowledge and school records. The IEP recorder writes identifying information, which includes the following, on the IEP.

- a. name (first, middle and last name of child);
- b. date of birth (month, day, and year)
- c. school implementing IEP (the school in which the child will be enrolled; the program or agency if the child is under 4 years of age).
- d. home school (school which the child would attend if enrolled in school and not disabled;
- e. grade placement ;
- f. date IEP completed (the day, month, and year when the ARC members agree all components of the IEP are complete;
- g. beginning date of services described in IEP; all services begin on this date unless otherwise specified in IEP: and
- h. review date

### Process and Content

The ARC develops the IEP for each child through a variety of discussions and activities designed to:

- \* summarize present levels of educational (includes behavioral) performance;
- \* develop measurable annual goals based on the present levels of performance;
- \* create benchmarks or short-term instructional objectives for each measurable annual goal, including criteria and evaluation procedures;
- \* identify specially designed instruction (special education) and related services, including physical and vocational education as needed;
- \* **specify by role the person(s) responsible for implementation;**
- \* specify projected dates for initiation and anticipated duration of special education and related services;
- \* describe extent of participation in the regular education program, including travel training and vocational education; and
- \* set review date for determining, at least on an annual basis, if the goals and short-term objectives and benchmarks are being achieved.

### **ARC Considerations in IEP Development**

An ARC shall consider each of the following in the development, review and revision of every IEP:

- (a) the strengths of the child and the concerns of the parents for enhancing the education of their child;
- (b) the results of the initial or most recent evaluation of the child; and
- (c) as appropriate, the results of the child's performance on any general state or district-wide assessments program.

The ARC shall:

- (a) in the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies and supports, to address that behavior
- (b) in the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
- (c) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille,

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unless the ARC determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

(d) consider the communication needs of the child;

(e) in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(f) consider whether the child needs assistive technology.

All these factors shall be considered, as appropriate, in the review, and if necessary, revision of a child's IEP.

Once the ARC has considered all of these factors, the ARC shall include a statement on the IEP indicating the needs for a particular device or service (including an intervention, accommodation, or other program modification), if any are needed, in order for the child to receive a free appropriate public education (FAPE).

The general education teacher, as a member of the ARC, is to participate in developing the child's IEP, including the determination of appropriate positive behavioral interventions and strategies and the determination of supplementary aids and services, program modifications, and supports for school personnel.

### Assistive Technology Services and Devices

"Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

(a) the evaluation needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(b) purchasing, leasing, or otherwise providing for the acquisition of assistive devices by children with disabilities;

(c) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) coordinating and using other therapies, intervention, or services with assistive technology devices, like those associated with existing education and rehabilitation plans and programs;

(e) training or technical assistance for a child with a disability, or, if appropriate, the child's family; and

(f) training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the child. (Chapter I, Definitions)

"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability." (Chapter I, Definitions)

The ARC must determine whether an individual child needs an assistive technology (AT) device or service, and if so, the nature and extent to be provided. It is possible that an assistive technology evaluation will be required to determine if the child would need an assistive technology service and/or assistive technology device. Any needs identified should be reflected in the content of the IEP, including, as appropriate, the instructional program and services provided to the child. (see Chapter II, Section 7, FAPE)

If an AT device is purchased through Medicaid funding for an eligible student or from other public or private funds, the device belongs to the family. If the ARC determines that the child needs access to

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those devices in non-school settings in order to receive FAPE (e.g. to complete homework), then the KLEA will provide that device at home or in other settings. (Federal Appendix A, Q & A #36)

ARC members determine the need for assistive technology, using current evaluation information and the IEP information including the Present Level of Educational Performance, Goals and Objectives, and Specially Designed Instruction, by answering the following questions:

- a. Will the child be required to receive an education in a more restrictive environment if the assistive technology is not provided?
- b. Will personnel assigned to any objective be unable to implement strategies and activities leading to mastery of the objective without assistive technology?
- c. Does the assistive technology directly affect the acquisition of skills or information identified as a goal or outcome of public education for all children?
- d. Is the assistive technology required to allow the child access to a public school program?

If the ARC answers “yes” to any question, then there is a need for assistive technology and the service is included in the IEP.

If the ARC answers “no” to all the questions, then the ARC determines there is no need for assistive technology.

Assistive technology services and devices are commonly stated on the IEP as goals & objectives or benchmarks; supplementary aides and services; or as related services. (see Assistive Technology Guide, KDE for more information.)

### Present Levels of Educational Performance (PLEPs)

The IEP for each child shall include a statement of the child's present levels of educational performance, including how the child's disability affects the child's involvement and progress in the general curriculum, as provided in the KY Program of Studies, 707 KAR 3:303, or for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.

The purpose of special education is to ensure access of the child to the general education curriculum, so that he or she can meet the educational standards that apply to all children.

“Appropriate activities” in the context of preschool children refers to age-relevant developmental abilities or milestones that typically developing children of the same age would be performing or would have achieved. (Federal Appendix A Q & A #1)

Participating in the general curriculum does not mean that children must be educated entirely within the general education classroom if that placement is not appropriate. It means that they are working toward meeting the same standards as all other children and learning the same skills expected of all children. That does not necessarily mean that it is appropriate for children who are the same age as 5<sup>th</sup>-graders to be doing exactly the same thing that the 5<sup>th</sup>-grade class is doing. Children may have accommodations or be participating in a modification of the 5<sup>th</sup>-grade curriculum. Or, if they have not attained the prerequisite 5<sup>th</sup>-grade skills or have surpassed the 5<sup>th</sup>-grade skills, he or she may be proceeding through the general curriculum at a different level (e.g., may be working on skills in the 3<sup>rd</sup>-grade curriculum or the 6<sup>th</sup>-grade curriculum).

Describing the Present Levels of Educational Performance

The ARC members may consider the following areas of functioning as each relates to the present level of educational performance of the child:

- a. Health, Vision, Hearing, Motor abilities includes vision, hearing, speech mechanism, motor/psychomotor (i.e., gross motor and fine motor, postural or muscle tone, reflexes and reactions, posture and movement practices), and medical/health.
- b. General Intelligence includes intelligence and thinking processes (e.g., knowledge, comprehension, application, analysis, synthesis, and evaluation).
- c. Communication status includes receptive and expressive language, nonverbal communication, articulation/phonology, mode of communication, voice, and fluency.
- d. Academic/Developmental performance includes content area achievement (e.g., reading comprehension, basic reading skills, mathematics, calculations, mathematics reasoning, written expression, listening comprehension); strategies for classroom success, learning style, and functioning level in specific academic and/or developmental skill areas.
- e. Transition Needs/ Vocational Concerns includes general work behaviors (e.g., attention to task, work rate, work organization, attendance, punctuality and physical stamina); dexterity; following directions; working independently or with job support; job interests/preferences; abilities; other special needs; job-specific work skills; interpersonal relationships/socialization; and related work skills (e.g., independent transportation, appropriate use of break time, appropriate dress for work).
- f. Social and Emotional status includes those adaptive behaviors (e.g., personal and daily living skills, community living skills, communication skills) and social skills (e.g., independent living and social responsibility) which enable a child to meet environmental demands and to assume responsibility.

**Developing Measurable Annual Goals, Including Benchmarks or Objectives**

The IEP for each child shall include a statement of measurable annual goals, including benchmarks or objectives relating to meeting the child's needs that result from the disability to enable the child to be involved in and progress in the general curriculum as provided in the KY Program of Studies, 707 KAR 3:303, or for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.

Specifying by Title/Role Persons Responsible (Implementers)

In order to develop a mechanism to implement the IEP and for monitoring the child's progress, the ARC members assign at least one person, listed by title/role and not by name, to plan and carry out specially designed instruction to help the child achieve the objective. ARC members select each implementer based on the services described and the qualifications needed for providing the service. For children with disabilities in the preschool program, the implementer(s) report the child's mastery and progress towards mastery of IEP objectives to the parent on at least a semi-annual basis.

**Specially Designed Instruction, Related Services, Supplementary Aids and Services and Program Modifications and Supports for School Personnel**



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### Individual Education Program

The IEP shall include a statement of the specially designed instruction and related services and supplementary aids and services to be provided to the child, or on behalf of the child. There shall also be a statement of the program modifications and supports for school personnel that will be provided for the child to:

- a. advance appropriately toward attaining the annual goals;
- b. be involved and progress in the general curriculum;
- c. participate in extracurricular and other nonacademic activities; and
- d. be educated and participate with other child without disabilities.

An IEP shall contain an explanation of the extent, if any, to which the child will not participate with nondisabled children in the classroom.

#### Specially Designed Instruction

The specially designed instruction component of the IEP describes the types of specific instructional services needed by the child to accomplish IEP goals and objectives

Specially designed instructional services may be supportive, corrective, developmental, or therapeutic in nature. These services, which directly relate to annual goals and short-term objectives, include alterations, modifications, adaptations in instructional methods, content, materials, techniques, media, physical setting, and environment. These services are not ordinarily provided for most of the children or youth of a given age or grade level, but are needed in order for a child with an educational disability to learn. In some cases, the specially designed instruction needed is the same for all short-term objectives or benchmarks within a goal statement. In other cases, the specially designed instruction varies. Categorical classrooms or program plans are not a substitute for a description of the services needed. Specially designed instruction does not describe the place where the services will be provided.

Specially designed instruction:

- a. describes what will be provided to meet each short-term objective or benchmark;
- b. includes services which support achievement of the goals and objectives and benchmarks specified; and
- c. describes what changes will be made to the current instructional program or services for the child.

The ARC members use generic terms to describe decisions and do not use commercial programs or name brands in the description. The ARC members do not state where services will be provided in this section of the IEP.

The Recorder will document all decisions on the IEP and will document discussion on the Conference Summary.

#### Related Services

"Related services means transportation and such developmental, corrective, or supportive services that are required to assist a child with a disability to benefit from special education. It includes speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities in children, counseling services including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also means school health services, social work services in



school, and parent counseling and training." (See Chapter I, Definitions)

**Related Services:**

- a. relate directly to the specially designed instruction needed to achieve IEP objectives and directly affect acquisition of essential skills or information;
- b. are required (necessary) for the child to benefit from special education;
- c. are described by the nature and type of each service; and
- d. are not needed solely for aesthetic or medical reasons.

(See Guidelines for Delivery of OT and PT Services in Educational Settings, (KDE) & KY Eligibility Guidelines for Students with Speech Language Impairment-Revised for more information.)

All specially designed instruction and related services are included on the IEP.

**Supplementary Aids and Services, and Program Modifications and Supports for School Personnel**

Supplementary aids and services means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable a child with disabilities to be educated with nondisabled children to the maximum extent appropriate. (See Chapter VIII, Placement Decisions for more information on placement in the least restrictive environment.) The ARC must consider what aids, services and other supports might be effective in ensuring that a child with disabilities may be educated in regular education classes. Supplementary aids and services as determined by the ARC shall be provided to the child, or on behalf of the child. Program modifications and supports for school personnel would include services that are provided to the teachers of a child with a disability to help them more effectively work with the child.

The Recorder will document all decisions on the IEP.

**Extent of Non-Participation in Regular Education Program**

The Recorder will document all decisions on the IEP.

**Participation in State or District Assessments/Alternate Portfolios**

An IEP shall contain a statement of individual modifications to be provided the child in order to participate in the state or district-side assessment. These modifications shall be based on the requirements contained in 707 KAR 5:070, "Inclusion of special Populations in the State-Required Assessment and Accountability Programs". If the ARC determines that the child meets the criteria for participation in the Alternate Portfolio, as provided in 707 KAR 5:070, it shall provide a statement of its decision and the reasons for the decision.

Instructional modifications or related services identified in the IEP are implemented if needed for participation in the state assessments, or any other group assessments administered to all students in a classroom. Any testing accommodations or modifications must be used consistently as part of routine instruction and classroom assessment, and must also meet all additional requirements. The ARC will determine appropriate testing accommodations or modifications for a child based upon the PLEPs, goals and objectives or benchmarks, and specially designed instruction in the child's IEP.

The Recorder will document all decisions on the IEP.

### **Specifying Projected Dates for Initiation, Duration, Location and Frequency of Services and Modifications**

An IEP shall include the projected date of the beginning of the services and modifications listed in the IEP and the anticipated frequency, location (i.e. regular or special education), and duration of the services and modifications.

#### Setting Beginning and Ending Dates

The ARC must make an individual determination regarding when special education and related services will begin and end for each child. Decisions regarding when special education and related services will begin for a new school year are not to be based on convenience of school staff but the individual needs of each child.

#### Specifying Amount of Time

The amount of services to be provided must be stated in the IEP, so that the level of the KLEA's commitment of resources will be clear to parents and other ARC members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to the specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP. (Federal Appendix A, Q & A #35)

The amount of a special education or related service to be provided to a child may be stated in the IEP as a range (e.g., speech therapy to be provided three times per week for 30-45 minutes per session) only if the ARC determines that stating the amount of services as a range is necessary to meet the unique needs of the child. (Federal Appendix A, Q & A #35) For example, it would be appropriate for the IEP to specify, based upon the ARC's determination of the student's unique needs, that particular services are needed only under specific circumstances, such as the occurrence of a seizure or of a particular behavior. A range may not be used because of personnel shortages or uncertainty regarding the availability of staff.

#### Location of Service

"The location of services in the context of an IEP generally refers to the type of environment that is the appropriate place for the provision of service." (Federal Comments, p. 12594)

The Recorder will document all decisions on the IEP.

## **Monitoring of Progress and Reporting to Parents**

An IEP shall include a statement of:

- \* how the child's progress toward the annual goals will be measured; and
- \* how the parents will be regularly informed, at least as often as the school or LEA informs parents of the progress of all children.

A parent shall be informed of:

- \* their child's progress towards the annual goals; and
- \* the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

One method that could be used in meeting this requirement would be to provide periodic report cards to the parents of children with disabilities that include:

- \* the grading information provided for all children in the same grade at the same intervals; and
- \* the specific information required for children with disabilities regarding progress towards IEP goals.

(Federal Appendix A, Q & A #10)

When developing an IEP, the ARC members assign implementer/s for each goal and the objectives and benchmarks for that goal. The person(s) assigned to implement each goal and its objectives, monitors progress by collecting and maintaining written information for the objectives and benchmarks. **Data is collected by the implementer at a minimum of one time per week for any objective that is being taught on a daily basis.**

When the implementer analyzes data and determines that the child is making progress according to the expected criteria designated for the goal, the implementer continues the instructional process. Adequate progress means that the child is making progress according to the expected criteria designated for the goal, and the child is expected to achieve the goal by the end of the IEP year.

When the implementer determines that progress is not occurring according to the expected criteria designated for the objective, the implementer contacts the KLEA Representative to initiate an ARC meeting.

ARC members review ongoing progress data to determine whether the child meets criteria for extended school services (ESY). If progress data for a child documents regression in basic skills during extended breaks in services (summer, Christmas break, etc., the ARC members discuss the need to extend services beyond the school year. (See Chapter II, FAPE for more information on ESY services.)

## **SECTION 6. TRANSITION SERVICES**

The term "transition services" is defined as:

... a coordinated set of activities for a student with a disability that-

- (1) is designed within an outcome-oriented process, that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
- (2) Is based on the individual student's needs, taking into account the student's preferences and interests; and
- (3) Includes-(i) Instruction; (ii) Related services; (iii) Community experiences; (iv) The development of employment and other post-school adult living objectives; and (v) If appropriate, acquisition of daily living skills and functional vocational evaluation. (Chapter I, Definitions)

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Transition services for children with disabilities may be special education, if provided as specially designed instruction or related services, and if required to assist a child with a disability to benefit from special education.

Student Age 14 or younger, if appropriate

Beginning at age fourteen (14), or younger if deemed appropriate by the ARC, the IEP for a child with a disability shall include a statement of the transition service needs of the child under the applicable components of the child's IEP that focus on the child's course of studies. This statement shall be updated annually.

The purpose of the requirement for the consideration of transition service needs beginning no later than age fourteen (14), is to focus attention on how the child's educational program can be planned to help the child make a successful transition to his or her goals for life after secondary school. (Federal Appendix A, Q & A #11)

The ARC, in determining appropriate measurable annual goals (including benchmarks or objectives) and services for a student, must determine what instruction and educational experiences will assist the student to prepare for transition from secondary education to post-secondary life. (Federal Appendix A, Q & A #11)

The statement of transition service needs should relate directly to the student's goals beyond secondary education, and show how planned studies are linked to these goals. For example, a student interested in exploring a career in computer science may have a statement of transition services needs connected to technology course work, while another student's statement of transition services needs could describe why public bus transportation training is important for future independence in the community. (Federal Appendix A, Q & A #11)

To determine if a child or a youth with a disability, age fourteen or younger, needs transition services that focus on the child's course of studies, the ARC asks the following questions:

- a. Is the severity or nature of the disability such that the needs of the child or youth for transition to post-secondary activities differ significantly from the needs of peers who do not have disabilities?
- b. Is the child at risk of dropping out of school?
- c. Are there other reasons the ARC believes that transition services that focus on the child's course of study should be initiated for this child at this time?

If the ARC answers "yes" to any of the questions, then the ARC develops a plan for needed transition services and the IEP Recorder describes this plan in the IEP.

If the ARC answers "no" to each question, then the ARC indicates that such services are not needed at this time (Recorder includes this statement on the IEP), and the ARC asks the questions again during each annual review of the IEP.

Student Age 16 or younger, if appropriate

For a child beginning at age sixteen (16), or younger if deemed appropriate by the ARC, the IEP for the child with a disability shall include a statement of needed transition services for the child, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

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Transition planning at this level requires a broader focus on coordination of services across, and linkages between, agencies beyond the KLEA.

If the ARC determines that a youth needs assistance from other service agencies to make a transition to post-school activities, the ARC Chairperson invites potential service providers (e.g., Vocational Rehabilitation, Department for the Blind, Mental Health Affiliates) to be members of the ARC and the ARC reconvenes to develop a transition plan and complete the IEP including:

- a. anticipated needs of the youth regarding access to post-secondary options and community living;
- b. steps to be taken by KLEA and other agencies to address the needs (e.g., assessment, referral, etc.); and
- c. implications of anticipated status of the youth at age eighteen (18): emancipation, limited guardianship, or full guardianship.

A statement of inter-agency transition services is developed, if appropriate, indicating each agencies' responsibilities, linkages, or both, including a description of the specific services to be provided; projected dates for initiation of services and anticipated duration (beginning and ending dates); and the agency that is responsible. As an option, the ARC may complete the Action Plan on the Kentucky Student/Career Transition Plan Addendum for Student with Disabilities, which includes this information, and state on the IEP that the information to meet this IEP requirement is on the Action Plan.

If an agency, other than the LEA, (or state agency responsible for developing the child's IEP) fails to provide the transition services described in the IEP. The LEA ( or the state agency responsible for developing the child's IEP) shall reconvene the ARC to identify alternative strategies to meet the child's transition objectives set out in the IEP.

Alternative strategies might include the identification of another funding source, referral to another agency, the public agency's identification of other district-wide or community resources that it can use to meet the student's identified needs appropriately, or a combination of these strategies.

A participating agency shall not be relieved of the responsibility under IDEA to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the criteria of the agency.

However, nothing in the law relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

### Student age 17

At least one year prior to the child reaching age 18, the IEP shall include a statement that the child and his parents (§ 300.517 IDEA) have been informed of his rights under 707 KAR Chapter 1 and that rights will transfer to the child upon reaching age 18.

## **SECTION 7. PRIVATE SCHOOL PLACEMENTS BY KLEA**

When a private school referral or placement is being considered by the ARC, the KLEA Representative will invite the DoSE to attend the ARC meeting.

When a child with a disability is placed by the LEA in a private school or facility, the LEA remains responsible for compliance with all requirements in the Special Education regulations as stated in 707 KAR Chapter 1. When the LEA places or refers a child with a disability in a private school or facility, the LEA shall ensure that the child:

- (a) is provided specially designed instruction and related services in conformance with an IEP that meets the standards of all special education regulations in 707 Chapter 1, and at no cost to the parents;
- (b) is provided an education that meets the standards of the LEA including general curriculum standards; and
- (c) has all the rights of any child with a disability served by the LEA.

Prior to placing or referring a child with a disability to a private school or facility, the LEA shall initiate and conduct an ARC meeting to develop an IEP for the child. The LEA shall ensure that a representative of the private school or facility attends the ARC meeting. If a representative cannot attend, the LEA Representative shall use other methods to ensure participation by the private school or facility, such as individual or conference telephone calls.

The KLEA Representative, in consultation with the DoSE, contacts the appropriate staff at private school or facility, to arrange for a representative(s) to participate in the ARC meeting. The contact(s) and the plan(s) for participation shall be documented in the child's special education record by the KLEA Representative.

After a child with a disability is placed in a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the LEA.

This determination will be made by the DoSE, who will serve as the KLEA Representative while the child is placed in the private school or facility.

If the private school or facility initiates the meetings, the LEA shall ensure that the parents and LEA staff, as appropriate, are involved in any decision about the child's IEP and agree to any proposed changes in the IEP before those changes are implemented.

## **SECTION 8. IEP ACCOUNTABILITY**

### Good Faith Efforts

The LEA shall provide specially designed instruction and related services to each child with a disability in accordance with his IEP and shall make a good faith effort to assist the child to achieve the goals and objectives or benchmarks in the IEP.

IDEA-97 is clear that the IEP is not a performance contract and does not constitute a guarantee by the public school and the teacher that a child will progress at a specified rate. The LEA, individual

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schools and teachers have continuing obligations to make good-faith efforts to assist the child in achieving the goals and objectives or benchmarks listed in the IEP, including those related to transition services. In addition, teachers and other personnel who carry out portions of the child's IEP must be informed about the content of the IEP and their responsibility regarding its implementation.

If a child is not progressing as expected in meeting the annual goals, or is not progressing as expected in the general curriculum, if appropriate, any implementer or ARC member who is concerned about progress shall request an ARC meeting to address the lack of expected progress.

### Inclusion in State Wide Assessments

The LEA shall be responsible for including children with disabilities in the statewide assessment as provided in 703 KAR Chapter 5, Assessment and Accountability; Procedures for the inclusion of special populations in the state-wide assessment and accountability program.

Methods for inclusion of children with disabilities in state wide assessments are addressed by the ARC, and decisions are recorded on the IEP by the IEP Recorder. (See Section 5, "Contents of the IEP" for more information.)

### Parents Retain all Due Process Rights

These provisions of IEP accountability shall not limit the parents' right to ask for revisions of the child's IEP or to invoke due process procedures if the parents feel that good faith efforts are not being made.

## **IEP RESOURCES**

### **OSEP and IDEA Partnership approved materials:**

“A Guide to the Individualized Education Program”; OSEP, July 2000

“Developing Educationally Relevant IEPs: A Technical Assistance Document for Speech-Language Pathologists”; IDEA Partnerships with ASHA; September 2000

### **Relevant KY Statutes and Regulations**

703 KAR Chapter 5 Assessment and Accountability

703 KAR 5:070 Procedures for the inclusion of special populations in the state-required assessment and accountability programs.

### **Materials Developed by KDE**

*Inclusion of Special Populations in the State-Required Assessment and Accountability*

Guidelines for Delivery of OT and PT Services in Educational Settings

Assistive Technology Guidelines

### **Pertinent Case Law (in order by date of decision)**

Hendrick Hudson Central School District Bd. of Ed. v Rowley, 458 U.S.176, 102 S. Ct. 3034, 3049 (1982)

The court determined that the IDEA does not require that the level of educational services to be accorded to a student with disabilities must maximize the student’s potential. This case established a basic floor of opportunity, but did not establish a standard for determining what constitutes meaningful educational benefit.

Hall v. Vance County Bd. Of Ed., 774 F. 2d 629, 636 (4<sup>th</sup> Cir. 1985)

The purpose of the IEP is to provide a plan of education that is appropriate to meet the individual needs of the student with disabilities.

Board of Education of Windsor Regional District v. Diamond, 808 F 2d, 987 (3<sup>rd</sup> Cir. 1986)

IDEA “requires a plan likely to produce progress, not regression or trivial educational advancement.”

Polk v. Central Susquehanna Intermediate Unit 16, 853 F. 2d 171 183 (3<sup>rd</sup> Cir.1988)

The courts hold that the educational benefit provided must be more than mere *de minimus* or trivial advancement.

Doe v. Bd. Of Ed. Of Tullahoma City Schools, 9 F. 3d. 455 (6<sup>th</sup> Cir 1993)

The court determined that the school district is in compliance with the requirements of IDEA when an IEP is reasonably calculated to provide educational benefit. The court requires the school district to provide “the educational benefit of a serviceable Chevrolet” and holds that the “Board is not required to provide a Cadillac”.